APPENDIX A

Pertinent Provisions of the Internal Revenue Code of 1954

CHAPTER 32—MANUFACTURERS EXCISE TAX.

SEC. 4061. IMPOSITION OF TAX.

(a) AUTOMOBILES.—There is hereby imposed upon the following articles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to the specified percent of the price for which so sold:

(1) Articles taxable at 8 percent. * * *

Automobile truck chassis.

Automobile truck bodies.

Automobile bus chassis.

* * * * * * * * *

Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

* * * * * * * * *

(2) Articles taxable at 10 percent * * *

Automobile chassis and bodies other than those taxable under paragraph (1).

* * * * * * * * *

(b) PARTS AND ACCESSORIES.—There is hereby imposed upon parts or accessories * * * for any of the articles enumerated in subsection (a) sold by the manufacturer, producer, or importer a tax equivalent to 8 percent of the price for which so sold, * * *.

(26 U.S.C. 1952 ed., Supp. II, Sec. 4061).

SEC. 4216. DEFINITION OF PRICE.

(a) CONTAINERS, PACKING AND TRANSPORTATION CHARGES.—In determining * * * the price for which an article is sold, there shall be included any charge

for coverings and containers * * *, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary or his delegate in accordance with the regulations.

(b) CONSTRUCTIVE SALE PRICE.—If an article is—

(1) sold at retail,

(2) sold on consignment, or

(3) sold (otherwise than through an arm's length transaction) at less than the fair market price,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary or his delegate.

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(26 U.S.C. 1952 ed., Supp. II, Sec. 4216).

SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

* * * * * * * * * * *

(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.—Under regulations prescribed by the Secretary or his delegate credit or refund, without interest, shall be made of the overpayments determined under the following paragraphs:

(1) PRICE READJUSTMENTS.—If the price of any article in respect of which a tax, based on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article

or a covering or container, or by a bona fide discount, rebate or allowance, the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment.

* * * * * * * * *

(26 U.S.C. 1952 ed., Supp. II, Sec. 6416).

Pertinent Regulations

Regulations 46, Sec. 316.13 Discounts and adjustments, generally.

(a) Readjustments in sale price (such as allowable discounts, rebates, bonuses, etc.) can not be anticipated. * * * However, if the price upon which the tax was computed is subsequently readjusted, a proper credit may be taken against the tax due on a subsequent return, or an appropriate claim for refund may be filed. * * *

(b) Where articles are sold over a period of time under an agreement for a quantity rebate, or an agreement for a so-called wholesale bonus, and an adjustment in price is actually allowed in accordance with such agreement, the tax may be adjusted in the return for the month in which the price is finally determined, or a claim for refund may be filed. * * *

(c) Where articles are sold under an agreement which provides for a rebate in the case of a price reduction applicable to articles remaining unsold in the hands of a dealer, and a rebate is made in accordance with such agreement, a corresponding adjustment of tax paid may be effected through a credit or claim for refund. * * *

(d) * * * allowances, payments or adjustments made to persons other than the manufacturer's vendee are not deductible from the sale price under any conditions for purposes of computing the tax.

APPENDIX B

FORD MOTOR COMPANY

v.

THE UNITED STATES

156 F. Supp. 554

(December 4, 1957)

ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

WHITAKER, *Judge*, delivered the opinion of the court:

Plaintiff sues to recover excise taxes on amounts expended by it to discharge its obligation under its established policy and under its ninety-day warranty on automobiles sold by it to its dealers. Ninety days is the warranty period customary in the trade. We think its case is ruled by our decision in *General Motors* v. *United States*, No. 55-56, decided January 16, 1957.

1. The distinction plaintiff seeks to draw, that in the *General Motors* case the sale was to the consumer whereas in the present case it was to the dealer, is without merit. In both cases the manufacturer gave to its purchaser, in one case, the consumer, and in the other, the dealer, a warranty that it was selling him a sound article; hence, sums spent to remedy any defect appearing in the warranty period were spent to make good the manufacturer's representation that the article sold was free of defects, and therefore the sums spent were not a readjustment of the sales price or a rebate or allowance.

In the *General Motors* case, *supra*, the seller made the necessary repairs; in the present case, the purchaser did so, and then was reimbursed by the manufacturer. In each case, the expenditure by the manufacturer was for correcting a defect. It was not a readjustment of the sales price.

The sales price was for an article free of defects. The sums spent for correcting defects were to fulfill the seller's part of the bargain, to deliver a sound article.

It makes no difference that the defect appeared after the dealer had resold the article. Under his contract of resale, he was obligated to his purchaser to make good any defects appearing in a certain period, and the manufacturer was in turn liable to the dealer to make them good. The dealer, who was the purchaser from the manufacturer, neither lost anything nor gained anything on account of remedying the defects. Therefore, there could not have been a rebate or allowance to him.

2. Plaintiff devotes one paragraph of its brief to expenditures made to remedy defects discovered after the warranty period, in accordance with the seller's established policy as set forth in written communications from the seller to the purchaser. The character of these expenditures does not differ from the others. They were made in a liberal interpretation of the obligation of the seller to deliver a sound article, as an agreed extension of its obligation under the warranty. That the defect appeared after the warranty period, strictly construed, makes no difference. The expenditures were still made to give the purchaser what he had contracted to buy, and in accordance with the seller's policy of which the purchaser had been informed before the sale. After the expenditures were made, the contractor got no more than he had paid for, to wit, a sound article; he certainly did not get back any part of the purchase price.

Defendant's motion for judgment on the pleadings is granted, and plaintiff's petition is dismissed.

It is so ordered.

FAHY, *Circuit Judge*, sitting by designation; LITTLETON, *Judge*; and JONES, *Chief Judge*, concur.

MADDEN, *Judge*, concurs in the result.

UNITED STATES COURT OF CLAIMS

No. 231-56

FORD MOTOR CO.

vs.

THE UNITED STATES

Clerk's Office
Washington, D. C., Jan. 8, 1958

To Attorney of Record and Assistant Attorney General, and Commissioner

Sirs:

Please take notice that in the above-entitled cause there has been entered this day on the plaintiff's motion for extension of time for filing motion for rehearing the following order: Allowed

Respectfully,

WILLARD L. HART
Clerk, Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS

No. 231-56

FORD MOTOR CO.

v.

THE UNITED STATES

Order

This case comes before the court on plaintiff's motion, filed February 3, 1958, for rehearing and to vacate the judgment of dismissal entered December 4, 1957, together with defendant's response thereto. Upon consideration thereof,

IT IS ORDERED this second day of April, 1958, that plaintiff's motion for rehearing and to vacate the judgment of dismissal be and the same is denied.

BY THE COURT

MARVIN JONES,
Chief Judge.